

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:04 CR 13
)	
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
-vs-)	
)	<u>MEMORANDUM OPINION</u>
AUBREY WALLER,)	<u>AND ORDER</u>
)	
Defendant.)	

This case is before the Court on Defendant, Aubrey Waller's Third Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255. (ECF # 313, 370, 386). Mr. Waller previously filed his first §2255 motion to vacate on April 11, 2008, which was denied. (ECF #313, 330). He filed a second motion on June 24, 2020. (ECF #370). That motion was transferred to the Court of Appeals for certification of a second or successive motion. (ECF #375). The Court of Appeals declined to certify the motion and it was, therefore, terminated. (ECF #378). Subsequently Mr. Waller filed the instant motion, again seeking to vacate his sentence. (ECF #386).

Section 2255 provides that:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain —


(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

See 28 U.S.C. § 2255(h).

Because Mr. Waller has failed to receive authorization from the Sixth Circuit to file this second, or successive §2255 motion, the motion may not be reviewed by the Court at this juncture. Therefore, the Clerk of Court is directed to transfer Mr. Waller's instant motion to the Sixth Circuit Court of Appeals pursuant to *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

IT IS SO ORDERED.


Donald C. Nugent
United States District Judge

Date: May 26, 2022